

ZHOIE PEREZ,
Plaintiff,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

) NO. CV 23-03381-SVW (AS)
)
)
) **ORDER STRIKING NOTICE OF REMOVAL**
)
) **AND RELATED DOCUMENTS AND**
)
) **REMANDING MATTER TO STATE COURT**
)
) **(Dkt. Nos. 20-22)**

On June 3, 2022, Plaintiff Zhoie Perez, proceeding through counsel, filed a complaint in Los Angeles County Superior Court case no. 22STCV18378 ("State Case") against defendants MMR Center, Inc., Green Angels and Tony Santillan (collectively "MMR defendants") as well as Does 1-50. (Docket ("Dkt.") No. 20, Exh. A). The State Case complaint raises six state law causes of action related to an incident that allegedly occurred on June 3, 2021: (1) assault and battery; (2) negligence; (3) violation of the Ralph Civil Rights Act, Cal. Civ. Code § 51.7; (4) violation of the Bane Civil Rights Act, Cal. Civ. Code § 52.1; (5) violation of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51-52; and (6) false imprisonment. (Id.).

1 On May 3, 2023, Plaintiff paid the filing fee and filed her
2 Complaint in this action raising First and Fourth Amendment claims
3 against the City of Los Angeles and several police officers
4 (collectively "City defendants") related to the June 3, 2021 incident
5 ("Federal Case"). (Docket ("Dkt.") No. 1). The City defendants
6 answered the Complaint on May 30, 2023. (Dkt. Nos. 9-13).

7
8 On November 6, 2023, the MMR defendants filed in the Federal Case
9 a Notice of Removal that attempts to remove the State Case and
10 consolidate it into the existing Federal Case. (Dkt. No. 20). The MMR
11 defendants assert that removal is proper because this Court has federal
12 question jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental
13 jurisdiction pursuant to 28 U.S.C. § 1367. (Id.). However, the Court
14 concludes the State Case was not properly removed to federal court.

15
16 Initially, the Notice of Removal is procedurally improper. "As a
17 procedural matter, a litigant may not properly remove a state court
18 case 'into' an existing federal case as [the MMR defendants are]
19 attempt[ing] to do here. Instead, the litigant must comply with the
20 procedures of the removal statutes and pursue consolidation
21 thereafter." Alcoser v. Ford, 2022 WL 4078564, *2 (5th Cir. 2022)
22 (footnote omitted), cert. denied, 143 S. Ct. 752 (2023); see also
23 Gilliam v. Austin, 2002 WL 1034115, *4 (N.D. Cal. 2002) ("[T]he notice
24 of removal is the means of removing a case from state court to federal
25 district court, where it is viewed as a 'new' case and is assigned a
26 'new' case number[.] . . . A case cannot be removed from state court
27 to become part of an already existing federal case."); Paralee Boyd
28 Salon LLC v. COG Studio, LLC, 2016 WL 5388911, *1 (E.D. Mich. 2016)

1 ("The Notice of Removal was improperly filed. This is because a case
2 cannot be removed from state court to become part of an already
3 existing federal case."), appeal dismissed by, 2017 WL 4863251 (6th
4 Cir. 2017).

5
6 Additionally, removal of a case from state court to federal court
7 is governed by 28 U.S.C. § 1441, which provides in relevant part that
8 "any civil action brought in a State court of which the district courts
9 of the United States have original jurisdiction, may be removed by the
10 defendant or the defendants, to the district court of the United States
11 for the district and division embracing the place where such action is
12 pending." 28 U.S.C. § 1441. "Removal and subject matter jurisdiction
13 statutes are 'strictly construed,' and a 'defendant seeking removal has
14 the burden to establish that removal is proper and any doubt is
15 resolved against removability.'" Hawaii ex rel. Louie v. HSBC Bank
16 Nev., N.A., 761 F.3d 1027, 1034 (9th Cir. 2014) (citation omitted);
17 Provincial Gov't of Marinduque v. Placer Dome, Inc., 582 F.3d 1083,
18 1087 (9th Cir. 2009).

19
20 Here, the MMR defendants allege that removal of the State Case is
21 proper based on federal question jurisdiction pursuant to 28 U.S.C. §
22 1331, which provides that "[t]he district courts shall have original
23 jurisdiction of all civil actions arising under the Constitution, laws,
24 or treaties of the United States." 28 U.S.C. § 1331. However, the MMR
25 defendants have not met their burden of demonstrating federal question
26 jurisdiction exists.

1 “The presence or absence of federal-question jurisdiction is
2 governed by the ‘well-pleaded complaint rule,’ which provides that
3 federal jurisdiction exists only when a federal question is presented
4 on the face of the plaintiff’s properly pleaded complaint.”
5 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987); Rivet v.
6 Regions Bank of La., 522 U.S. 470, 475 (1998). “The rule makes the
7 plaintiff the master of the claim; he or she may avoid federal
8 jurisdiction by exclusive reliance on state law.” Caterpillar Inc.,
9 482 U.S. at 392; City of Oakland v. BP PLC, 969 F.3d 895, 904 (9th Cir.
10 2020), cert. denied, 141 S. Ct. 2776 (2021). Here, as set forth above,
11 the State Case complaint raises only state law claims. (Dkt. No. 20,
12 Exh. A).

13
14 Furthermore, neither of the exceptions to the well-pleaded
15 complaint rule apply. See City of Oakland, 969 F.3d at 906 (“Under the
16 well-pleaded-complaint rule, the district court lacked federal-question
17 jurisdiction unless one of the two exceptions to the well-pleaded
18 -complaint rule applies.”). First, “federal jurisdiction over a state
19 law claim will lie if a federal issue is: (1) necessarily raised, (2)
20 actually disputed, (3) substantial, and (4) capable of resolution in
21 federal court without disrupting the federal-state balance approved by
22 Congress.” Gunn v. Minton, 568 U.S. 251, 258 (2013). That is not the
23 case here. There is simply no indication – and the Notice of Removal
24 does not suggest – that any of the State Case claims fit within the
25 “‘special and small category’ of state-law claims that arise under
26 federal law for purposes of § 1331 ‘because federal law is a necessary
27 element of the . . . claim for relief.’” City of Oakland, 969 F.3d at
28 904 (quoting Empire Healthchoice Assur., Inc. v. McVeigh, 547 U.S. 677,

1 699 (2006); some internal quotation marks omitted). Likewise, while
2 “[c]omplete preemption is an exception to the well-pleaded complaint
3 rule[,]” Saldana v. Glenhaven Healthcare LLC, 27 F.4th 679, 686 (9th
4 Cir.), cert. denied, 143 S. Ct. 444 (2022), it is inapplicable here.
5 See City of Oakland, 969 F.3d at 906 (“[C]omplete preemption for
6 purposes of federal jurisdiction under § 1331 exists when Congress: (1)
7 intended to displace a state-law cause of action, and (2) provided a
8 substitute cause of action.”). Accordingly, since the State Case
9 raises only state law claims and no exception to the well-pleaded
10 complaint rule applies, there is no federal question jurisdiction over
11 the State Case.

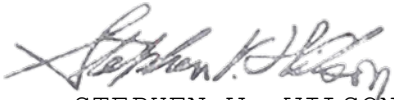
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13 The MMR defendants also assert that removal is proper based on the
14 supplemental jurisdiction statute, 28 U.S.C. § 1367. (Dkt. No. 20 at
15 3). Their argument appears to be that since the Court has federal
16 question jurisdiction over the Federal Case, and since the Federal Case
17 and State Case relate to the same incident, the State Case can be
18 removed to federal court and this Court can assert supplemental
19 jurisdiction over the State Case. (Id.). This is incorrect. “That a
20 related case [is] pending in federal court [is] not in itself
21 sufficient grounds for removal under 28 U.S.C. § 1441.” Fabricus v.
22 Freeman, 466 F.2d 689, 693 (7th Cir. 1972); see also Wescom Credit
23 Union v. Dudley, 2010 WL 4916578, *3 (C.D. Cal. 2010) (The supplemental
24 jurisdiction “statute does not authorize supplemental jurisdiction over
25 free-standing state law claims that are related to a *separate* action
26 over which the court has jurisdiction.” (italics in original)); Jalon
27 v. Bank of Am., 2023 WL 6429607, *3 (E.D. Pa. 2023) (“[A]n
28 ‘already-existing federal action cannot provide the mechanism for

1 removal of a non-removable state court action.'" (citations omitted)).
2 A "'court must have jurisdiction over a case or controversy before it
3 may assert jurisdiction over [supplemental] claims.'" [Supplemental]
4 jurisdiction, therefore, cannot provide the original jurisdiction that
5 petitioners must show in order to qualify for removal under § 1441."
6 Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 34 (2002) (citation
7 omitted); see also Halmekangas v. State Farm Fire & Cas. Co., 603 F.3d
8 290, 294 (5th Cir. 2010) ("No federal court had original jurisdiction
9 over the ANPAC action, and § 1367, by its own terms, cannot fill the
10 void. Section 1367 grants 'supplemental jurisdiction' over state
11 claims, not original jurisdiction."); Motion Control Corp. v. SICK,
12 Inc., 354 F.3d 702, 706 (8th Cir. 2003) ("[A]ncillary jurisdiction does
13 not authorize removal under § 1441. Section 1441(a) provides that
14 removal is only proper where the federal district court has 'original
15 jurisdiction' over the state court case. Ancillary jurisdiction is not
16 original jurisdiction. . . ."); Ahearn v. Charter Twp. of Bloomfield,
17 100 F.3d 451, 456 (6th Cir. 1996) ("The supplemental-jurisdiction
18 statute is not a source of original subject-matter jurisdiction, and a
19 removal petition therefore may not base subject-matter jurisdiction on
20 the supplemental-jurisdiction statute, even if the action which a
21 defendant seeks to remove is related to another action over which the
22 federal district court already has subject-matter jurisdiction, and
23 even if removal would be efficient." (citations omitted)); Port Auth.
24 of N.Y. & N.J. v. Allianz Ins. Co., 443 F. Supp. 2d 548, 555 (S.D. N.Y.
25 2006) ("[S]upplemental jurisdiction cannot supply the original
26 jurisdiction needed to remove a state court complaint under 28 U.S.C.
27 § 1441(a) - 'even if the action which a defendant seeks to remove is
28 related to another action over which the federal district court already

1 has subject-matter jurisdiction, and even if removal would be
2 efficient.'" (citation omitted)); Ogaz v. Honeywell Int'l, Inc., 2021
3 WL 2822400, *4 (C.D. Cal. 2021) ("Where, as in this case, a plaintiff
4 files an action in state court with no federal question or diversity
5 jurisdiction, the original jurisdiction necessary for removal under
6 Section 1441 does not exist and the action cannot be removed. The
7 supplemental jurisdiction statute, 28 U.S.C. § 1367, does not provide
8 an independent source of original subject matter jurisdiction, and,
9 thus, a removal petition alleging that a court has subject matter
10 jurisdiction based on Section 1367 is improper, even if the removed
11 action is related to another action over which the federal district
12 court already has subject matter jurisdiction, and even if removal
13 would be more efficient.").

14
15 For the reasons discussed herein, the Court strikes the Notice of
16 Removal and the related documents (Dkt. Nos. 20-22) the MMR defendants
17 improperly filed in this action. Additionally, because the Court lacks
18 subject matter jurisdiction over the State Case, the Court remands the
19 State Case to the Los Angeles County Superior Court. See 28 U.S.C. §
20 1447(c) ("If at any time before final judgment it appears that the
21 district court lacks subject matter jurisdiction, the case shall be
22 remanded."); Caterpillar, Inc., 482 U.S. at 399 ("Respondents' claims
23 do not arise under federal law and therefore may not be removed to
24 federal court.").

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26 DATED: November 21, 2023

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STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE